

TITLE 7

CHAPTER 75. DELAWARE LAND PROTECTION ACT

§ 7501. Short title.

This chapter shall be known and may be cited as the "Delaware Land Protection Act."

(67 Del. Laws, c. 352, § 1.;)

§ 7502. Declaration of policy.

The General Assembly finds that:

(1) The provision of lands for public recreation and conservation of natural resources promotes biological diversity, public health, prosperity and general welfare and is a proper responsibility of government.

(2) Lands now provided for such purposes will not be adequate to meet the needs of an expanding population in years to come.

(3) The expansion of population, while increasing the need for such lands, will continually diminish the supply and tend to increase the cost of public acquisition of lands available and appropriate for such purposes.

(4) Rapid growth and spread of urban development is encroaching upon, or eliminating, many open areas and spaces of varied size and character. These areas and spaces, if preserved and maintained in their present open state, constitute important physical, biological, social, aesthetic or economic assets.

(5) The State must act now to protect and to help local governments to protect substantial quantities of such lands as are now available and appropriate so that they may be preserved and developed for the purposes enumerated herein.

(6) It is the public policy of the State and its political subdivisions that the preservation of open spaces shall be accomplished through the acquisition of interests or rights in real property, or donation of said lands, and that said acquisition constitutes a public purpose for which public funds have been expended or advanced and should be continued.

(67 Del. Laws, c. 352, § 1.;)

§ 7503. Purpose.

(a) State agencies may acquire any interest in real property for the following purposes, to carry out and expand on the intent of the conservation program described in Volume 65, Chapter 212 of the Laws of Delaware:

- (1) To protect and conserve all forms of natural and cultural resources;
- (2) To protect and conserve the biological diversity of plants and animals and their habitat;
- (3) To protect existing or planned parks, forests, wildlife areas, nature preserves or other recreation, conservation or cultural sites by controlling the use of contiguous or nearby lands;
- (4) To preserve sites of special natural, cultural or geological interest;
- (5) To connect existing open spaces into a cohesive system of greenways and resource areas;
- (6) To provide for public outdoor recreation; and
- (7) To allow for water resource conservation.

(b) State agencies may acquire property or rights in real property pursuant to this chapter by the use of direct acquisition for cash, by purchase money mortgage, by installment sale or by other methods or incentives as determined by the Secretary after consultation with the Secretary of Finance. State agencies shall not exercise the "right of eminent domain" to carry out the provisions of this chapter.

(67 Del. Laws, c. 352, § 1.;)

§ 7504. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section except where the context clearly shows a different meaning:

(1) "Conservation Trust Fund" means the Delaware Land and Water Conservation Trust Fund established and maintained pursuant to Chapter 47 of this title, as it may be amended or superseded.

(2) "Council" means the Delaware Open Space Council established pursuant to this chapter.

(3) "Department" means the Department of Natural Resources and Environmental Control.

(4) "Interest in real property" means any right in real property, improvements thereto, or water including but not limited to a fee simple, easement, remainder, future interest, lease, license or covenant of any sort, option or contractual interest or right concerning the use of or power to transfer property.

(5) "Land" or "lands" means real property, including improvements thereon; rights of way; water and riparian rights; easements, privileges and all other rights or interests of any kind or description in, relating to or connected with real property.

(6) "Open space" means any open lands characterized by (a) great natural scenic beauty, or (b) whose existing openness, natural condition or present state of use, if retained, would maintain important recreational areas and wildlife habitat, and enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources, including environmentally sensitive areas. For the purposes of this chapter, open space shall include significant cultural, historical or archaeological sites as determined by state plans and policies adopted by the Bureau of Historic and Cultural Affairs.

(7) "Overlay zone" means a local zoning district and its associated use, design and environmental performance standards that is superimposed on the underlying zone for the purpose of providing additional protection.

(8) "Permanent protection" means the acquisition by purchase, gift, grant, bequest, devise or otherwise the fee or any lesser interest, development right, easement, covenant or other contractual right in real property in perpetuity necessary to achieve the purposes of this chapter.

(9) "Project" means the planning for, and the acquisition and development of property, undertaken to achieve the purposes of this chapter.

(10) "State agency" means, and shall apply exclusively to, the following units of state government which manage natural and cultural resources:

a. Department of Natural Resources and Environmental Control (Division of Parks and Recreation and Fish and Wildlife);

b. Department of State (Division of Historical and Cultural Affairs); and

c. The Department of Agriculture (Division of Resource Management).

(11) "State resource area" means those open space lands duly identified by the Council and adopted by the Department for protection.

(12) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control.

(67 Del. Laws, c. 352, § 1; [72 Del. Laws, c. 489, § 94.](#);)

§ 7505. Delaware Open Space Council.

(a) There is created a Delaware Open Space Council to advise the Secretary on all matters relating to the administration, implementation and financing of this protection program; site

selection; methods of protection; and interagency and intergovernmental coordination among public and private land preservation agencies.

(b) The Council shall have 9 members. The Council shall consist of:

(1) One member of the Senate appointed by the President Pro Tempore to serve at the pleasure of the President Pro Tempore;

(2) One member of the House of Representatives appointed by the Speaker of the House to serve at the pleasure of the Speaker of the House;

(3) Seven members appointed by the Governor, at least 4 of whom shall be persons who have been active or have shown an interest in preserving open space. Of the 7 members appointed by the Governor, 3 shall be persons who reside in New Castle County, 2 shall be persons who reside in Kent County, and 2 shall be persons who reside in Sussex County. Initially, 2 members shall be appointed for 2 years; 2 members for 3 years; and 3 members for 4 years. Thereafter members shall serve 4-year terms, provided that at the end of a member's term such member shall continue to serve until a successor is duly appointed;

(4) No more than 5 Council members shall be of 1 political party; provided however, that failing or declining to announce one's political affiliation shall not make such person ineligible for appointment;

(5) The Secretaries of Agriculture and State, the Director of the Delaware Economic Development Office, and the State Liaison Officer for the federal Land and Water Conservation Fund or their duly authorized designees shall be ex officio members of the Council without voting powers.

(c) The Governor shall appoint the chairperson of the Council.

(d) The Department of Natural Resources and Environmental Control shall furnish clerical, technical, legal and other services required by the Council in the performance of its official duties.

(e) Members of the Council shall receive no compensation but may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties. The Council shall hold at least 1 regular meeting in each quarter of each calendar year and shall keep a record of its proceedings. All proceedings of the Council shall be conducted in accordance with Chapter 100 of Title 29.

(f) For purposes of conducting business of the Council, 5 voting members shall constitute a quorum. A majority vote of the members present at a meeting at which a quorum is present shall be required on any action or matter before the Council.

(g) The Council may adopt procedural rules and regulations to carry out the provisions of this chapter.

(67 Del. Laws, c. 352, § 1; 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 186, § 1; [74 Del. Laws, c. 394, §§ 1-6;](#))

§ 7506. Powers and duties of the Council.

The Council shall:

(1) Review and recommend to the Department for adoption, after a public hearing, criteria for delineation, and dedication of open space;

(2) Review and recommend to the Department for adoption, after public hearing, state resource area maps;

(3) Review and recommend to the Department for approval lands for permanent protection according to the adopted state resource area maps;

(4) Review and recommend to the Department for adoption, a ranking system to establish land acquisition or permanent protection priorities;

(5) Advise and consult with the Secretary of the Department of Natural Resources and Environmental Control and with other state land preservation agencies and staff on preservation matters;

(6) Advise and consult regarding any change from permanently protected status of open space lands acquired or otherwise protected;

(7) Use the "Greenspaces for Delaware's Future" report prepared by the Department in 1990 as a starting point for carrying out the duties, and purposes of this chapter;

(8) Promote and assist, in conjunction with state agencies, in the development and establishment of creative and innovative methods to secure the permanent protection of open space including but not limited to:

a. Local and regional land trusts;

b. Conservation and preservation easements on a statewide basis;

c. Purchase of less than fee simple property rights;

d. Program(s) to create financial incentives for private sector contributions to establish operations and maintenance funds at state resource areas;

(9) Analyze, in conjunction with the Department of Finance, the state and local tax codes and formulate incentives to encourage landowners and developers to donate or retain ownership of their lands in an undeveloped state;

(10) Coordinate with an interagency working group to be appointed by the Secretary that shall provide technical advice on all matters relevant to this chapter. At a minimum the working group shall consist of state agency technical staff from the Department of Agriculture, the Delaware Economic Development Office, and the Divisions of Historical and Cultural Affairs, Fish and Wildlife, and Parks and Recreation. Non-state agency membership shall be comprised of representatives from each county government, which may include up to 1 member each from the Planning Department, Parks and Recreation, and or Executive Office, as determined by the County Executive or Levy Court President. The Secretary shall select a chairperson from among the members. The group will work to maximize the use of funds, and use of protection methods other than fee simple acquisition to permanently protect statewide priority projects through utilization of open space criteria and the ranking system adopted by the Department;

(11) Review and recommend to the Department for approval funding from the Conservation Trust Fund and serve as the review authority for other state and federal funding programs if called upon to do so;

(12) Work with the Department, private nonprofit conservation groups and interested private sector interests to preserve and protect open space for the benefit of the citizens of the State;

(13) Recommend to the Department for adoption, after public hearing, any rules and regulations as may be necessary to carry out any provisions of this chapter.

(67 Del. Laws, c. 352, § 1; 69 Del. Laws, c. 458, § 1.;)

§ 7507. State resource areas.

(a) In furtherance of the purposes of this chapter, the Council shall, in conjunction with the interagency working group, develop and forward to the Department for adoption:

(1) Standards and criteria consistent with the purposes of this chapter for evaluating the lands and waters of the state for inclusion as state resource areas in the open space program;

(2) A system for determining the existence and location of state resource areas; their degree of endangerment; an evaluation of their importance; and information related to their natural, historic or open space values;

(3) A priority ranking system for the acquisition of said lands and waters or rights therein.

(b) The Department shall carry out the following actions in furtherance of this chapter:

(1) Designate and adopt state resource areas for inclusion in the open space program. State resource areas shall be shown on maps of sufficient scale to identify individual properties for planning and zoning purposes.

(2) Update the state resource area maps, in consultation with county governments, at least every 5 years.

(c) Upon adoption of the state resource area maps the Department shall send copies to the affected county for inclusion in the conservation element of their respective comprehensive plans, and send copies to affected municipalities for inclusion in their respective comprehensive plans. Updated state resource area maps shall also be submitted to said agencies no later than 1 year prior to mandatory comprehensive plan updates as required in the Delaware Code.

(d) It is the intent of the General Assembly that the Council shall, in conjunction with the Department, analyze the feasibility and advisability of establishing a right of first refusal to purchase any property located within a state resource area. The Council shall propose and recommend to the General Assembly legislation to accomplish the foregoing, after holding public hearings with respect to such proposal.

(67 Del. Laws, c. 352, § 1.;)

§ 7508. Land use requirements.

(a) In order to maintain the protection of the unique ecological functions of state resource areas in a manner consistent with the purposes of this chapter, each county government shall adopt and incorporate overlay zoning ordinances, guidelines and specific technically based environmental performance standards, design criteria and mitigation requirements, where appropriate, that shall apply to significant ecological functions and identified historic and archeological sites on these lands. The guidelines shall designate the boundaries to which they apply and provide a procedure for the appeal of such boundary designations. The zones created hereunder shall overlie and not replace the existing zoning or preclude or prejudice any change thereto. The standards specified in the guidelines shall include, but not be limited to:

(1) The establishment of frontage, building height, setback and site design requirements that shall apply in state resource areas and which may apply to lands immediately adjacent thereto, which will result in residential, commercial and industrial or other uses which minimize the loss of open space and associated values of state resource area lands.

(2) The establishment of technically based specific environmental performance standards and design criteria that shall apply in and may apply adjacent to state resource areas in order to protect the values of said lands.

(b) The powers granted counties under Title 9 as they pertain to the protection of any natural feature or resource governed by this title, shall be exercised through the adoption of ordinances and land use requirements duly enacted or approved by the county government of each county. Such natural resource protection requirements shall restrict land use activity by means of enactment and enforcement of specific technically based environmental performance standards, design criteria and mitigation requirements consistent with state law and regulations. Minimum lot sizes, density limitations, and prescribed percentages of impervious surface and use limitations and prohibitions shall not constitute performance standards as required herein,

however, such limitations and restrictions shall be adopted where appropriate, to establish an alternative means of complying with the purpose and requirements of the overlay zones. It shall be the option of the owner of land to satisfy either (1) the county environmental performance standards, design criteria and mitigation requirement, or (2) the overlay zoning ordinances where such options are made available. The guidelines, performance standards, design criteria of this subsection shall not apply to lands producing agricultural commodities as defined in Chapter 7 of Title 3 or lands under state agency ownership.

(c) In order to encourage landowners and developers to promote the objectives of this chapter, each county government shall evaluate density bonuses, credits or other incentives and allowances to land owners and developers for lands or resource protection rights thereto, to encourage the permanent protection of open space and/or any natural resource as governed by this title and elect such measures as they deem appropriate. The counties shall evaluate and consider enactment of measures to allow such bonuses, allowances, incentives and credits to have the ability to be sold, transferred or applied, as a matter of right, to other lands to the maximum density permitted by the applicable zoning classification, so long as such action is consistent with the comprehensive plan of the county.

(d) Counties shall adopt zoning ordinances that enact these guidelines and standards within 18 months after receipt of state resource area maps from the Department. If a county government does not comply with this 18-month enactment requirement, said county shall be ineligible for any funds negotiated for but unexpended under subsection (e) of this section and return to the State an amount equal to Funds expended under an agreement negotiated under subsection (e) of this section.

(e) The Secretary shall negotiate an agreement and grant a one time amount of up to \$100,000 to each county to assist with compliance of the requirements in this section.

(67 Del. Laws, c. 352, § 1.;)

§ 7509. Program administration.

(a) The Department shall administer the conservation program described in this chapter. The Department shall develop, periodically review and maintain a comprehensive statewide outdoor recreation and conservation plan, for consideration and approval by the Council, which shall establish criteria and priorities for the application of funds available for the purposes of this chapter. The Department's existing statewide comprehensive outdoor recreation plan shall be the initial plan for the purposes of this subsection.

(b) The Department, in conjunction with other public and private land management organizations, shall undertake a special program to acquire or otherwise permanently protect lands within established state resource areas and other lands identified as having state significance according to the procedures of this chapter.

(c) Rules and regulations adopted, and contracts entered into, with respect to the Delaware Land and Water Conservation Trust Fund as originally established under § 4733 of this title shall

remain in effect with respect to the Conservation Trust Fund until amended, revoked or otherwise modified pursuant to this subsection.

(d) Direct costs associated with the administration of the conservation program described in this chapter shall be paid from the Land and Water Conservation Trust Fund.

(e) Five years after July 13, 1990, and every 5 years thereafter through the life of the program, the Secretary and the Council shall report to the Governor and the General Assembly on the status and accomplishments of the program with recommendations regarding continuation of land preservation activities. In addition to the requirements outlined above, the Secretary and the Council shall file annual reports with the General Assembly detailing accomplishments and activities of the program, including its impact on the tax base of the counties.

([67 Del. Laws, c. 352, § 1.](#);)

§ 7510. Zoning and use.

Notwithstanding any provision of this chapter to the contrary, no open space or other area acquired primarily for recreational use shall be rezoned, neither shall there be a change in the use of any such lands requiring a variance or subdivision approval, except upon 45 days prior notice to all elected members of the General Assembly in whose district such lands, or any part thereof, lie.

([72 Del. Laws, c. 156, § 2.](#);)

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